

SERVED: November 17, 2004

NTSB Order No. EA-5122

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 17th day of November, 2004

MARION C. BLAKEY,
Administrator,
Federal Aviation Administration,

Complainant,

v.

COLE NATHAN BRANTLEY,

Respondent.

Docket SE-17024

ORDER DISMISSING APPEAL

On September 28, 2004, respondent filed a notice of appeal from an Order Regarding Sanction that the law judge issued in this proceeding on September 14, 2004.¹ Section 821.47 of the Board's Rules of Practice (49 CFR Part 821),² requires that an

¹ In that order, the law judge modified the sanction from revocation of respondent's medical certificate to a 180-day suspension. In an earlier order, the law judge entered partial judgment on the pleadings, deeming the facts alleged in the Administrator's complaint to be admitted on the basis of respondent's failure to file an answer to the Administrator's complaint. The Administrator's complaint charged respondent with violating 14 C.F.R. § 67.403(c) when he failed to disclose on his medical application a suspension of his drivers license for chemical test failures and a DUI conviction.

² Section 821.47 provides, in part, as follows:

appeal from a decision of a law judge be filed within 10 days after service of the order.³

The time for filing a notice of appeal in this matter expired on September 24. Therefore, respondent's notice was filed four days late. Without good cause to excuse a failure to file a timely notice of appeal, or a request to file one out of time before it was due, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988).

In his response to the Administrator's motion to dismiss, respondent asks that his late appeal be accepted, citing, "a month long barrage of hurricanes here in Florida." Respondent (who lives in St. Petersburg, Florida) states, "[b]etween my time at home and time evacuating I had little chance of writing my appeal. Most government offices, including the post offices, were closed off and on throughout the past couple of weeks. ... Because I live in a mandatory evacuation zone, I was unable to get to documents pertaining to this case."

The record shows that respondent signed a certified mail receipt indicating he received the law judge's order on September 18, 2004. Accordingly, he had six days within which to file a timely notice of appeal. If there had been hurricane activity or mandatory evacuations during that six-day time period we might well have found that it constituted good cause for an untimely notice of appeal or extension request. We are not unsympathetic to respondents in Florida whose ability to take timely action has been hampered by post office closures or other hurricane-related difficulties. However, this respondent does not appear to fall into that category of respondents. Information from the Federal Emergency Management Agency Web site indicates that during the six days within which he should have filed his appeal (September 18 to 24, 2004) there was no hurricane activity in or near Florida. Accordingly, there would have been no reason to evacuate during that time period. Further, respondent does not

(..continued)

§ 821.47 **Notice of Appeal.**

A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving upon the other parties, a notice of appeal, within 10 days after the date on which the oral decision was rendered or the written initial decision or appealable order was served.

³ The law judge's order also included language clearly explaining this filing deadline. The service date appeared on the face of the order.

specifically assert that the post office was closed during this time, thereby preventing him from filing a timely appeal -- nor would such an assertion appear to be credible given the fact that the post office was apparently open on September 18 when respondent accepted delivery of the law judge's order and on September 28 when he mailed his untimely appeal.⁴

Therefore, respondent's assertions do not constitute good cause for his failure to file a timely appeal.

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's notice of appeal is dismissed.

Ronald S. Battocchi
General Counsel

⁴ We note that the phone numbers of the law judge's office were clearly listed in the law judge's order, so respondent might also have opted to call the law judge's office and explain his situation before the expiration of his appeal period.